

GIFTS OF TRAVEL BENEFITS FROM NON-FEDERAL SOURCES TO MILITARY AND CIVILIAN EMPLOYEES

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I. INTRODUCTION

A. For most commands within the U.S. Army, travel issues do not contribute significantly to the number of legal actions processed. For legal offices associated with hospitals, medical centers, and medical services and research commands within the U.S. Army Medical Command, however, travel issues can generate a substantial number of complex legal actions. Medical personnel are extensively educated, trained and experienced professionals whose expertise is in high demand. These individuals are often invited to attend scientific or medical conferences, to present papers, to give presentations, or to provide technical instruction to, or collaborate with, private entities. Such private entities are often professional associations, medical supply companies, potential technical transfer partners, universities and other hospitals; frequently, these entities are willing to provide airfare, lodging, and meals for the invitee in order to obtain the invitee's expertise.

B. Acceptance of travel benefits by military and civilian employees of the Federal Government is governed by several statutes and regulations that interface in a somewhat confusing manner. The overall purpose of these statutes and regulations is to ensure that military and civilian employees are not put in a position where they could potentially be influenced in the performance or non-performance of their official duties.

C. Definitions. The following definitions are derived from DoD Directive 5500.7-R, the Joint Ethics Regulation (JER):

1. DAEO or Designee. The Designated Agency Ethics Official, the Alternate Designated Agency Ethics

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Official, Deputy Designated Agency Ethics Official, or Ethics Counselor who has been delegated specific written authority by the DoD Component DAE0 to perform specific functions on behalf of the DoD Component DAE0.

2. DoD Component. For these purposes, the uniformed services and the Department of Defense.

3. DoD Employee. Any DoD civilian officer or employee of any DoD Component, any active duty regular or Reserve Military officer, any active duty enlisted service member, and others in accordance with DoD Directive 5500.7-R.

4. Ethics Counselor. The DoD Component DAE0, Alternate or Deputy, or a DoD employee appointed in writing by the DoD Component DAE0 or Designee to generally assist in implementing and administering the ethics program and to provide ethics advice to employees.

5. Non-Federal Entity. A self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government.

6. Travel Benefits. Travel-related gifts, including in-kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources.

II. ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES.

A. Acceptance from Non-Federal Sources.

1. Official Travel. Official travel by DoD employees shall be funded by the Federal Government except that DoD Components may accept official travel benefits, including in kind subsistence, accommodations, and payments or reimbursements of expenses, from non-Federal sources as provided in Chapter 4 of the Joint Ethics Regulation (JER). DoD employees may also accept travel and travel-related expenses from a foreign Government in accordance with DoD Directive 1005.13. This Directive discusses the criteria to be used to determine whether it is appropriate to accept travel expenses of more than minimal value. Payment of

such expenses may be accepted if travel begins and ends outside the United States, except when travel across the United States is the shortest, least expensive, or only available route. Also, travel must be in the best interests of the DoD Component and United States Government, considering all the circumstances. See also 5 U.S.C. 7342.

2. Personal Travel. Chapter 4 of the JER does not apply to travel benefits provided to DoD employees in their personal capacities. DoD employees must, however, report such travel expenses when appropriate in accordance with Chapter 7 of the JER. Additionally, there may be certain limitations to the acceptance of travel benefits in one's personal capacity, including restrictions on acceptance from prohibited sources, because of the employee's Federal position, as well as under 41 U.S.C. 423.

3. Acceptance procedures. Any official travel benefits accepted from non-Federal sources must be:

a. Approved in writing by the travel-approving authority, upon the advice of the DoD employee's Ethics Counselor; and,

b. Approved in advance of travel, if accepted under the authority granted by 31 U.S.C. 1353.

B. Acceptance of Travel and Related Expenses by a DoD Component from Non-Federal Sources.

1. Official Attendance at a Meeting or Similar Function. In accordance with 31 U.S.C. 1353, GSA travel regulations, and 41 C.F.R. 301-1.2 and 304, Heads of DoD Components may accept travel expenses from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at "a meeting or similar function." This definition may encompass not only meetings, but conferences, symposia, scientific, professional or technical gatherings, or events of a similar nature. For detailed guidance, see Chapter 7, Part W, Paragraphs U7900-7908, and Joint Travel Regulations, Chapter 4, Part Q, Paragraphs C4900-4908.

2. Conflicting Non-Federal Source. A conflicting non-Federal source is an entity that has

interests which may be substantially affected by the performance or non-performance of a given employee's duties. Acceptance of travel benefits from a conflicting non-Federal source is, therefore, generally prohibited. An exception exists, however, if the employee's supervisor first makes a written determination that attendance at the meeting far outweighs the concern that the acceptance of benefits may improperly influence the employee in the performance of his or her official duties. The supervisor should first consult with an Ethics Counselor before attempting to rely upon this exception.

3. Payment Guidelines. Neither DoD employees (nor their spouses) shall accept cash payments, or checks made out to the employee on behalf of the Federal Government.

a. When travel benefits are reimbursed rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the employee's organization. Any such payment to the organization received by the DoD employee shall be submitted with his or her travel voucher as soon as practicable.

b. The DoD employee must exclude from his travel voucher any request for reimbursement for travel benefits that were furnished in kind by a non-Federal source to ensure that appropriate deductions are made in the travel, per diem, and other allowances payable by the United States.

4. Reporting. Each travel-approving authority designated by the DoD Component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD Component DAE0 or Designee semi-annually (on April 30 and October 31) to accommodate the required reporting to OGE (on May 31 and November 30 of each year).

5. DoD Component DAE0 or Designee Approval. Acceptance of official travel benefits from non-Federal sources for attendance at meetings or similar functions requires the concurrence of the DOD Component DAE0 or Designee; (that is, an Ethics Counselor). The Ethics Counselor should produce a written memorandum setting forth the analysis for acceptance or non-acceptance of travel benefits. The standard for analysis is whether a

reasonable person with knowledge of all relevant facts could conclude that the travel is for an official purpose and is for attendance at a meeting or other similar function. The employee's attendance at the meeting or function must be appropriate and consistent with the interests of the organization.

III. ACCEPTANCE OF TRAVEL BENEFITS INCIDENTAL TO TRAINING OR IN CONJUNCTION WITH PRESENTATION OF AN AWARD.

A. Applicability.

Military members are permitted to accept contributions, awards, and other payments on the same terms as civilian DoD employees in accordance with the requirements below. See 5 U.S.C. 4111 and 5 C.F.R. 2635.204(d).

B. Conditions for Acceptance under 5 U.S.C. 4111.

DoD employees are permitted to accept contributions, awards, travel benefits, and other payments incident to training in non-Government facilities from non-Federal sources. Benefits may be accepted directly from non-Federal sources only when all of the following conditions are met:

1. The source is a tax-exempt organization described by 26 U.S.C. 501(c)(3) or a state or local government (see 5 C.F.R. 410, Subpart G);

2. The contribution, award, or payment of travel benefits is incidental to training in non-Federal Government facilities or attendance at a meeting;

3. An appropriate deduction is made from any payment by the Federal Government to the DoD employee for his or her official travel entitlement;

4. The contribution, award, or payment is not a reward for services to the non-Federal source;

5. Acceptance of the contribution, award, or payment would not reflect unfavorably on the DoD employee's ability to perform his or her duties in a fair and objective manner, nor would it otherwise compromise the integrity of any Federal Government action; and

6. The travel approving authority authorizes the acceptance of the contribution, award, or payment in writing.

C. Conditions for Acceptance under 5 C.F.R. 2635.204(d).

1. Cash prizes must be part of a bona fide award, or incident to a bona fide award, that is given for meritorious public service or achievement by an individual or organization that does not have interests which may be substantially affected by the performance or non-performance of the employee's official duties. Examples of such an award would include the Nobel Prize for Medicine, and/or the Russell and Burch Award, presented by the Humane Society of the United States.

2. An employee who is to receive an award or prize may also accept travel benefits, meals and entertainment given to him and to members of his family at the event at which the presentation of the award takes place. If the value of these benefits, combined with the value of the prize, is more than \$200, a written determination is required from an Ethics Counselor.

D. Payments from Multiple Sources.

When more than one organization participates in making a single contribution, award, or travel payment, only the organization that actually selects the recipient and administers the funds from which the contribution, award, or travel payment will be made will be considered the source of the travel benefits.

E. Reporting.

Individuals who are required to file financial disclosure statements must report acceptance of such travel benefits on their financial disclosure statements if the fair market value of those benefits meet or exceed the reportable amount.

IV. ACCEPTANCE OF INCIDENTAL BENEFITS.

There are two basic principles that DoD employees must consider in determining whether they may accept benefits offered incident to their official travel. See Department of Defense Directive 4500.9.

A. Federal Government Property.

Anything that does not fall within a gift exception or exclusion under 5 C.F.R. 2635 Subpart B, or subsection 2-202 of the JER, which is received by the DoD employee as a result of official travel, belongs to the Federal Government, regardless of the source of the funding.

1. Travel coupons, tickets, promotional items of more than nominal value, frequent flyer mileage credits, and most other benefits received by DoD employees from non-Federal sources (e.g., airlines, rental car companies, hotels) incident to their official travel belong to the Federal Government. They may not be used for personal purposes.

2. If possible, such benefits should be turned over to the appropriate official.

3. Examples of Benefits Considered Federal Government property:

Frequent Flyer Mileage Credits. Paragraph 4-201a of the JER addresses the use of frequent flyer mileage credits obtained as a result of official travel. Frequent flyer mileage credits earned as a result of official travel are the property of the Federal Government. As such, they may be redeemed for airline tickets which are used for official travel, or for airline seat upgrades while on official travel. They must not, however, be used except in connection with official travel. First consideration of their use should always be given to the reduction of future travel costs, i.e., obtaining free airline tickets for future official travel.

- a. Upgrades. Official mileage credits may never be used to upgrade to first class. In certain circumstances, however, Government mileage credits may be used to upgrade to premium, or business-class travel.

Premium-class is a category other than first-class or coach/economy and may include business-class. Premium-class travel may only be used under limited circumstances, and a request with proper justification must be submitted through the travel-approving authority. If there are only two classes of travel on an airline, then the more limited of those classes is deemed first-class, despite what the airline may call it (e.g., premium-class, business-class, world-class, etc.); this means that if there is no intermediate class of travel, then Government mileage credits may not be used for seat upgrades at all.

b. First-class travel. With regard to first-class travel, military members are prohibited from traveling first-class while on official travel orders at Government expense. A military member on TDY orders desiring to travel first-class may pay the cost difference between coach and first-class with personal funds, or may utilize personal frequent flyer mileage credits, to do so, so long as he or she does not travel while in uniform. Military members should not, however, be in uniform when traveling in first-class or premium-class, whether they are in a leave or TDY status because of the potential for adverse public perceptions.

c. Personal frequent flyer mileage credits. In order to utilize personal mileage credits in conjunction with official travel, two separate frequent flyer accounts should be established with the Government carrier. Establishment of a personal and an official travel account will avoid the potential for commingled mileage credits. Under the provisions of the JER, commingled mileage credits belong to the Government unless the traveler can clearly establish which credits were derived from his or her personal travel. See 41 C.F.R. 301-1.103(f).

B. Other Awards to Users of Travel Services.

Travel companies sometimes give away merchandise, or award points toward merchandise and other prizes, to users of their services. If the travel services used are paid for by the Federal Government, any resulting award belongs to the Government. Benefits that cannot be used for official purposes may be accepted if a gift exception applies. Examples of benefits treated as gifts to an individual include:

1. Travel Upgrades (not Originating from Frequent Flyer Mileage Credits). Travel upgrades are commonly offered for such accommodations as airline seats, rental cars, and hotel rooms. Some travel upgrades are given on the spot; others are provided pursuant to some prearranged entitlement, such as a coupon. DoD employees on official travel may accept benefits such as an airline seat upgrade to premium - or business-class (although never first-class), a larger rental car in place of a compact, or a hotel room with a view instead of an interior room, for official use as long as there is no extra charge to the Federal Government to obtain the upgrade (see 5 C.F.R. 2635.204(c)).

2. On the Spot Upgrades. DoD employees may accept an upgrade offered on the spot under circumstances in which such upgrades are generally available to the public, to all Federal Government employees, or to all military members. For example, a travel company may provide upgrades, for example, to remedy overbooking or overcrowding, due to a shortage of smaller cars, or simply for customer relation purposes; sometimes upgrades may be offered to all military members in uniform. No upgrade may be accepted, however, if it is provided on the basis of the DoD employee's grade or position. Upgrades resulting from involuntary "bumps" while on official travel may not be used for personal travel. See 5 C.F.R. 2635.202(a)(2).

3. Use of Upgrade Certificates Other than Those Obtained From Frequent Flyer Miles. Some travel companies distribute coupons for free travel upgrades as a promotional offer. DoD employees may accept and use such coupons if they are realistically available to the general public (e.g., widely available coupons usable by bearer) or to all Federal Government employees or all military members (e.g., coupons available to any Federal Government employee for official travel). DoD employees may not use coupons provided because of their grade or position.

4. Incentives for Voluntary Surrender of Flight Reservations. Benefits, such as free tickets, that result from being involuntarily bumped from an overbooked flight on official travel belong to the Federal Government. The theory behind this somewhat counterintuitive rule is that the employee is still on Government time during the period of the involuntary bump. DoD employees may, however, keep free tickets received from a carrier for voluntarily giving

up a seat on an overbooked flight, and these free tickets can then be used for their personal travel. DoD employees on official travel cannot voluntarily surrender their seats, though, if the resulting delay would interfere with the performance of their duties. Additionally, the delay must not in any way increase the cost to the Federal Government. Travel vouchers should therefore disclose the voluntary surrender and resulting delays, and leave must be taken as appropriate.

V. PROCEDURES AND RESPONSIBILITIES OF THE TRAVEL-APPROVING AUTHORITY, THE TRAVELER, AND THE ETHICS COUNSELOR.

A. The travel-approving authority shall:

1. Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal Sources;

2. Acquire the concurrence of the DoD Component DAE0 or Designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5;

3. Prepare and submit a report to the DoD Component DAE0 or Designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353; and,

4. Prepare and submit a report to the DOD Component DAE0 or Designee within 30 days after completion of travel for which travel benefits have been paid by non-federal sources under 5 U.S.C. 4111.

B. Each DoD Component DAE0 or Designee shall:

1. Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 (due May 31 and November 30 of each year);

2. Retain reports from the travel-approving authority under 5 U.S.C. 4111 for two years; and,

3. Provide written concurrence for the approval of travel benefits, in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5.

C. Each DoD traveler shall:

1. Prepare and submit a report to the travel-approving authority reporting all travel benefits received that totaled \$250 or more, in accordance with the provisions of 31 U.S.C. 1353. The report should provide the following information, and be signed by both the traveler and the travel-approving authority:

a. Name of the reporting organization;

b. Listing of each event, (meeting, or similar function) for which the organization accepts payment of more than \$250 (for a member and spouse together, or for either the member or the spouse separately), including:

- (1) Sponsor of the event;
- (2) Location of the event;
- (3) Date(s) of the event; and,
- (4) Nature of the event.

c. Name of each member for whom such payment was accepted in connection with the event, including:

- (1) Member's Government position; and,
- (2) Member's travel date(s) in connection with attendance at the event;

d. Name of the accompanying spouse, if applicable, for whom payment was accepted in connection with the event, including:

- (1) Name of the member accompanied by the spouse;
- (2) Member's Government position; and,
- (3) Spouse's travel date(s) in connection with attendance at the event.

e. Identity of any non-Federal source from which payment was accepted in connection with the event.

f. Itemization of the benefits accepted by the organization in connection with attendance at the event, including:

(1) Description of the benefit, provided that benefits accepted as a part of a conference or training fee need not be reported separately;

(2) Method of payment (payment in kind, or by check or similar instrument);

(3) Individual for whom payment was accepted (member or spouse);

(4) Non-Federal source that provided the benefit(s); and,

(5) Amount of payment;

g. Total value of the payments accepted for the member and/or spouse in connection with the event, identified as follows:

(1) Total amount of payments provided by check or similar instrument; and,

(2) Total value of payments provided in kind.

2. Provide all necessary information to the travel-approving authority for a semi-annual report to the DoD Component DAEO;

3. Turn in any merchandise, frequent flyer miles, or other benefits as required under the JER.

VI. REFERENCES

- A. Title 41, United States Code, Section 423
- B. Title 31, United States Code, Section 1353
- C. Title 41, Code of Federal Regulations, Parts 301 through 304, "Federal Travel Regulation System." Current edition
- D. Joint Federal Travel Regulations, Paragraphs U2010B and U7900 through 7908 (DoD Uniformed Services)
- E. Joint Travel Regulations, Paragraphs C1200 and C4900 through 4908 (DoD Civilian Personnel)
- F. Title 10, United States Code, Section 2601
- G. Title 5, United States Code, Sections 4111 and 7342
- H. Title 5, Code of Federal Regulations, Section 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- I. Title 26, United States Code, Section 501
- J. Title 5, Code of Federal Regulations, Section 410, Subpart G, "Acceptance of Contributions, Awards, and Payments from Non-Government Organizations," current edition
- K. DoD Directive 1005.13, "Gifts from Foreign Governments," July 20, 1996
- L. DoD Directive 4500.9, "Transportation and Traffic Management," January 26, 1989
- M. Title 41, Code of Federal Regulations, Chapter 101, "Federal Property Management Regulations," current edition